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FILED
02/28/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0736-R-2022
Lambert, Kathryn
2.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Laura A. Bray; Margaret A. Bray; Robert O. Bray

CASE 43B-0736-R-2022

43B 158527-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Laura A. Bray, Margaret A. Bray, and Robert O. Bray claim 43B 158527-00 appeared in the Preliminary Decree with the following remark:

THE FLOW RATE IS MISSING.

The issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. On November 3, 2022 the Order Consolidating Case And Setting Filing Deadline was issued which includes the following:

The Statement of Claim states that the flow rate is 5.00 gpm. It is unclear why this flow rate is missing. The flow rate has been restored. A DRAFT abstract is attached for the claimants to review. To determine if the claimants agree this is the correct action to take, it is

ORDERED that the deadline for the claimants to file a written response concerning the flow rate is **December 5, 2022**. If no additional information is filed by the deadline, the Court will conclude the claimants agree the flow rate should be 5.00 gpm.

Nothing was filed.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDING OF FACT

The Preliminary Decree does not include a flow rate. The flow rate should be 5.00 GPM. The issue remark should be removed as addressed and resolved.

CONCLUSION OF LAW

The Statement of Claim is sufficient to resolve the issue remark without evidentiary

hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Laura A. Bray
Margaret A. Bray
Robert O. Bray
PO Box 714
Culbertson, MT 59218

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 158527-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

ROBERT O BRAY
PO BOX 714
CULBERTSON, MT 59218

LAURA A BRAY
PO BOX 714
CULBERTSON, MT 59218

MARGARET A BRAY
PO BOX 714
CULBERTSON, MT 59218

Priority Date: DECEMBER 31, 1965

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: 5.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF NORTH FORK SEVENMILE CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	10	2N	14E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENESE	10	2N	14E	SWEET GRASS